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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/410,999 10/01/99 CREAGAN

C 13098

EXAMINER

IM52/0706

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CHEVALIER, A

ART UNIT

PAPER NUMBER

1772

DATE MAILED:

07/06/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/410,999

Applicant(s)

CREAGAN ET AL.

Examiner

Alicia Chevalier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 and 6.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2 are 6-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "may have" in claim 2 is unclear which renders the claim vague and indefinite. It is unclear whether applicant is positively reciting that the density of the second layer is between 0.01 and 0.05 g/cc.

Claim 11 is unclear in scope, which renders the claim vague and indefinite. It is unclear if the conjugated fibers are part of the first or second layer or another layer all together. For purposes of examination it is considered to be a first layer made of conjugated fibers.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 4, and 5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Thompson et al. (5,368,926).

Thompson discloses a fluid accepting, transporting, and retaining structure used for disposable absorbent articles such as diapers, adult incontinence products, catamenials, bandages, and sanitary napkins (col. 1, lines 12-15). The structure comprises a topsheet (2nd layer), a pleated fluid accepting and transporting layer (1st layer), an absorbent core (3rd layer), and a backsheet (col. 4, lines 38-34 and figure 4). All the layers are joined/bonded together at their peripheral edges (figures 4 and 5).

The topsheet may comprise nonwoven synthetic fibers such as polypropylene or polyethylene (col. 5, lines 41-56). The body surface of the topsheet can be made hydrophilic by treating it with a surfactant (wetable surfactant) (col. 6, lines 23-28). The absorbent core may be made of nonwoven synthetic fibers (col. 6, lines 35-56). The transporting layer can be a nonwoven supnbond polyethylene or polypropylene fiber material (col. 9, line 6 to col. 10 line 68).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 6, 7, 10, and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al. (5,368,926).

Thompson et al. discloses the all the limitations of the instant claimed invention except the basis weight of the first and second layer or the density of the second layer. Selection of the

relative basis weights and densities of the layers within the board ranges claimed is taken as being within the ordinary skill of the art absent unexpected results.

The exact basis weight and density of the layers is deemed to be a cause effective variable. It would have been obvious to one having ordinary skill in the art to have determined the optimum value of a cause effective variable such as the basis weight and density of the layers through routine experimentation in the absence of a showing of criticality in the claimed basis weight and density. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990).

6. Claims 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al. (5,368,926).

Thompson et al. discloses the all the limitations of the instant claimed invention except that the first layer comprises apertures.

However, Thompson et al. discloses that the topsheet comprises apertures to improve the flow of liquid through the topsheet (col. 5, lines 40-56).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add apertures to the fluid accepting and transporting layer of Thompson et al, because it would help improve fluid movement through the layer.

7. Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al. (5,368,926) in view of Datta et al. (5,695,376).

Thompson et al. discloses the all the limitations of the instant claimed invention except that the polyolefin fibers are polyethylene/polypropylene conjugate fibers.

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Datta et al. discloses a lofty crimped-fiber nonwoven web layer which may be useful for handling liquids as an intaking and/or disturbing liquid layer in absorbent personal-care products such as sanitary napkins, disposable diapers, incontinent-care pads and the like (col. 11, line 54 to col. 12, line 10 and col. 1, lines 13-15). The lofty crimped-fiber nonwoven layer comprises polyethylene/polypropylene conjugate fibers with a basis weight of about 0.3 to about 20 oz. per square yard ($\sim 10\text{-}700\text{ g/m}^2$) (col. 7, line 34 to col. 8, line 59).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the material of Datta et al.'s intaking and/or disturbing layer as the material for Thompson et al.'s fluid accepting and transporting layer because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al. (5,368,926) in view of Datta et al. (5,695,376) as applied to claims 8 and 11 above, and further in view of Powers (5,597,647).

Thompson et al. and Datta et al. disclose the all the limitations of the instant claimed invention except that the second and third layers comprise are polyethylene/polypropylene fibers.

Powers discloses a personal care product such as diapers, adult incontinence product, and feminine hygiene products (col. 4, lines 57-59) comprising an absorbent layer comprising polyethylene-polypropylene side-by-side conjugate fibers with a weight basis of 0.34 to 102 gsm (col. 7, line 44 to col. 8, line 60).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the material of Powers' absorbent layer as the material for Thompson

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et al.'s absorbent layers because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (703) 305-1139. The Examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:00 p.m. The Examiner can also be reached on alternate Fridays

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Blaine Copenheaver can be reached by dialing (703) 308-1261. The fax phone number for the organization official non-final papers is (703) 305-5436. The fax number for after final papers is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose phone number is (703) 308-0661.

ac

07/02/01


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